

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 08/28/02 Item: 3.d.

File Number
CP02-032

Application Type
Conditional Use Permit

Council District
4

Planning Area
North San Jose

Assessor's Parcel Number(s)
237-18-008

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Elena Lee

Location: Southwest corner of Trimble Road and Kruse Drive

Gross Acreage: 17.45

Net Acreage: 17.45

Net Density: n/a

Existing Zoning: IP Industrial Park

Existing Use: Industrial

Proposed Zoning: No change

Proposed Use: Conversion of use from warehouse, research and development, and office to distribution center, and incorporating façade changes.

GENERAL PLAN

Completed by: EL

Land Use/Transportation Diagram Designation
Industrial Park

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: EL

North: Industrial

IP Industrial Park

East: Industrial

IP Industrial Park/HI Heavy Industrial

South: Industrial

HI Heavy Industrial

West: Industrial

IP Industrial Park

ENVIRONMENTAL STATUS

Completed by: EL

☒ Environmental Impact Report adopted on November 12, 1987
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: EL

Annexation Title: Orchard. No. 11

Date: July 1, 1955

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

CONTACT

APPLICANT/OWNER

KRP Architects
Attn: Kevin Jones
10 S. 3rd Street, Suite 400
San Jose, CA 95110

Legacy Partners
Attn: Tom Jodry
4000 E. 3rd Street, Suite 600
Foster City, CA 94404

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: EL

Department of Public Works

See Attached

Other Departments and Agencies

None.

GENERAL CORRESPONDENCE

None.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Legacy Partners, is requesting a Conditional Use Permit to allow a conversion of use of an existing building from warehouse and research and development, to a distribution center. Specifically, this permit would allow the operation of an overnight delivery service on a portion of the site. The Zoning Ordinance requires a Conditional Use Permit for distribution centers in the IP Industrial Park Zoning District.

The site is a rectangular-shaped lot generally surrounded by industrial and research and development offices to the north, east, south and west. The site is currently occupied by one single-story 195,000 square foot industrial building.

Two site development permits were approved for this site within the past two years. Site Development Permit H00-115 was approved on April 12, 2001 and allowed for the construction of five research buildings for a maximum of 265,738 square feet. Subsequently, the applicant submitted a Site Development Permit for a revised site design for a much smaller scale project. The new plan proposed remodeling the existing warehouse building and building two smaller office buildings, for a maximum of 71,833 square feet of new construction. The revised application was approved in March 2002.

ENVIRONMENTAL REVIEW

The environmental impacts of this project were addressed by a Final EIR entitled, "Rincon de Los Esteros Redevelopment Plan in San Jose," and findings were adopted by City Council Resolution No. 60197 on November 12, 1987.

A Traffic Impact Analysis for the proposed project was completed by the Department of Public Works. The project engineer determined that the proposed project would generate fewer trips than the original approved proposal for the site. The applicant will be required to complete only one of the previously required traffic mitigation measures to bring the project into conformance with the Level of Service Policy. The applicant will be required to contribute \$75,000 towards the installation of a second left turn lane at Junction Avenue and Brokaw Road or area-wide traffic improvements.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Industrial Park. The operation of a distribution center is an appropriate industrial use in the Industrial Park Land Use Designation as long as any functional or operational characteristics of a hazardous or nuisance nature can be mitigated through design controls. The proposed distribution facility proposes all sorting activities to be conducted within the existing building and does not propose the use of any hazardous materials. The site is generally surrounded by other industrial uses with similar characteristics and is not near any sensitive receptors.

ANALYSIS

The primary issue for this Conditional Use Permit is the project's conformance to the Zoning Ordinance Performance Standards and the appropriateness of this use for the specific site area. The requirement for a conditional use permit to allow distribution centers within the IP Industrial Zoning District was intended to protect the character of the Industrial Park Zoning Districts. The Industrial Park Zoning District is intended for lighter industrial uses, such as research and development and offices. The primary difference between industrial park and the heavier industrial categories is that performance and design standards are applied more stringently to industrial park uses. Distribution centers are permitted uses in the heavier industrial zoning districts. However, distribution centers can be an appropriate use for the Industrial Park Zoning District as well.

The subject application for a change of use to a distribution facility is proposed for an existing building on the site. The application does not propose any expansion of use or construction of new building area. The project incorporates some façade changes including additional roll-up doors to facilitate loading of packages to trucks and parking gates to separate truck circulation from passenger cars.

The project area is currently developed with a wide variety of uses and the existing building was originally constructed for heavier industrial uses. As stated earlier, there are both heavy industrial and industrial park uses that surround the site. The subject site was also recently rezoned in 2001 from Heavy Industrial to Industrial Park. In addition, as recommended by the Industrial Design Guidelines and required by the performance standards, all loading will be placed away from public view. The loading docks are placed at the interior, along the southern edge of the site, away from Trimble Road and Kruse Drive, and will be shielded from public view by a security gate. Sorting and collecting activities will be conducted inside the building and loading will be done behind parking gates. The only activities that would occur at the front of the site would be customer parking.

Because of the wide mix of existing industrial use and history of the area and the design of the facility, staff believes that the proposed distribution center is an appropriate use for this site. Due to the existing economic conditions, this conversion of use will enable the property owner to find a valuable tenant to occupy otherwise vacant space in a very tight market.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to answer questions on the project from the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution:

Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the IP Industrial Park Zoning District.
3. The environmental impacts of this project were addressed by a Final EIR entitled, "Rincon de Los Esteros Redevelopment Plan in San Jose," and findings were adopted by City Council Resolution No. 60197 on November 12, 1987.
4. The project is bounded by Trimble Road to the north and Kruse Drive to the east. Industrial uses generally surround the project site.
5. A distribution facility is a conditional use under the IP Industrial Park Zoning District.
6. The project proposes to convert the allowed use on the site from warehouse, research and development, office to a distribution center and incorporates some façade changes.
7. The project site is 17.45 gross acres in area.
8. The site is currently occupied by one 193,000 square foot industrial building. No expansion of the building area is proposed.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The project will be required to contribute toward a Congestion Management Program to fulfill the requirements of CMA North San Jose Deficiency Plan Measures:

- a. The purpose for deficiency measures is to promote the goals and policies of the General Plan of creating a positive community image by developing programs to reduce trips generated by San Jose employers and thereby improving air quality.
- b. The fee will be used to fund facilities and/or programs that include bike lockers at transit facilities, bike lanes, transit signal preempts, public education programs and traffic flow improvements.
- c. There is a reasonable relationship between use of the fee and the type of development project upon which the fee is imposed in that the subject program will be generate a substantial amount of vehicle trips.
- d. There is a reasonable relationship between the need for such transportation improvements, facilities and programs and the type of development project upon which the fee is imposed in that the subject project is located in a major industrial area which is a major employment area of San Jose and a major destination for business trips.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "696 Trimble Road Conditional Use Permit Submittal," dated June 17, 2002 and last revised on August 8, 2002, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.
5. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
6. **Colors and Materials.** All wireless communications antennas colors and materials are to be those specified on the approved plan set.
7. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.

8. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-02626) to the satisfaction of the Director of Public Works:

a. *Geology.*

- 1) Grading Permit. A grading permit is required.
- 2) Haul Permit. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to the issuance of a grading permit, contact the Department of Transportation at (408) 277-4304 for more information concerning the requirements for obtaining this permit.
- 3) Soils Investigation Report. The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the Project Engineer and/or City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Spec. Publ. 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.

b. *Storm Water Management Plan.* This project results in a land disturbance of more than five acres. Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:

- 1) The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.
- 2) The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control may include BMPs as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities.

Prior to the issuance of a grading permit, the applicant shall submit copies of the SWPPP, NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. To obtain an NOI application and further information about the Erosion Control Plan and the NPDES permit

requirements, please call the Department of Public Works at (408) 277-5161 or the SWRCB at (916) 657-1146.

- c. *Flood Elevation Certificate.* Flood: Zone AH (Elevation 38.00 per 1929 NGVD) and Zone AO (Depth 1')

This property is part of a submittal to FEMA for removal from the 100-year floodplain. Comments a), b), and c) may be disregarded if FEMA approves the removal prior to issuance of building permit.

- 1) Elevation certificates for each proposed structure, based on construction drawings, are required prior to the issuance of a building permit. Elevation Certificates for each built structure, based on finished construction, will be required once building construction is complete.
 - 2) A previous project (H01-075) proposed an improvement to an existing building (Building A) and construction of two new two-story buildings (Buildings "B" and "C").
 - a) For existing Building "A": The building must comply with the Substantial improvement policy for improvements to existing structures in a Special Flood Hazard Area. If the cost of the proposed improvements exceed 50% of the current market value of the existing structure, then the entire structure must fully comply with the City's Floodplain Management requirements (i.e. elevation above the base flood). Contact Maria Angeles, Floodplain Manager at (408) 277-5161 for more information.
 - b) For office building "B": elevate the lowest finished floor to 1.0' above the highest existing adjacent grade to the proposed structure or floodproof to the same elevation.
 - c) For office building "C": elevate the lowest finished floor to Elevation 38.00 per 1929 NGVD or floodproof to the same elevation.
 - 3) The Development shall conform to the North San Jose 1987 Floodplain Management Study. Ultimate blockage not to exceed 50% of the site perpendicular to flow of flood waters. Flow direction is east to west.
- d. *Street Improvements.*
- 1) Sidewalks and Tree Wells. Applicant shall, at no cost to the City, construct 10 foot attached sidewalk, with tree wells at the back of curb, along project frontage on Montague Expressway. This will require an encroachment permit from the County of Santa Clara.

- 2) Driveways, Sidewalks, Curbs. Applicant shall, at no cost to the City, remove and replace any broken or uplifted curb, gutter and sidewalk along project frontage.
 - 3) Kruse Drive Frontage. Applicant shall, at no cost to the City , construct sidewalk along Kruse Drive frontage.
 - 4) Driveway Cuts. Developer shall close unused driveway cut(s)
 - 5) Driveway Width. Proposed driveway width to be 26 feet.
 - 6) Handicap Ramps. Applicant shall, at no cost to the City: install handicap ramp at the corner of Trimble Road and Kruse Drive, install handicap ramp at opposite return across Kruse Drive.
 - 7) Pavement Restoration. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- e. *Sanitary.* The applicant shall show proposed sanitary laterals connecting to the existing sanitary mains located in Kruse Drive at the improvement plan stage.
- f. *Traffic.*
- 1) North San Jose Deficiency Fee. This project is located within the North San Jose Deficiency Plan area and must participate in the payment of the North San Jose Deficiency Plan fee. The current fee is \$362 per trip. Based on the 98 p.m. peak hour trips the fee due is \$35,476.
 - 2) Second Left Turn Lane. Developer shall contribute \$75,000 towards the addition of a second left-turn lane on the north leg of the intersection of Junction Avenue and Brokaw Road or area wide improvements prior to issuance of a Public Works Clearance.
- g. *Electrical.*
- 1) Electroliers. The installation, relocation and relamping of electroliers will be evaluated at the improvement plan stage.
 - 2) Electrical Conduit. Applicant shall, at no cost to the City, locate and protect existing electrical conduit in driveway and/or sidewalk construction.
 - 3) Driveway Clearance. Applicant shall provide clearance for electrical equipment from driveways. The minimum clearance from driveways is 10 feet in commercial areas.

- 4) Utilities Clearance. Applicant shall provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' feet from high voltage lines; 3 feet from secondary voltage lines; and 1' foot from communication lines.
- h. *Street Trees.* Street trees shall be installed within the public-right-of-way along the entire street frontage of Trimble Road and Kruse Drive, per City Standards. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373.
 - 1) Install street trees within the public right-of-way along the entire street frontage per City standards.
 - 2) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
 - 3) Contact the City Arborist at 277-2756 for the designated street tree.
- i. *Construction Agreement.* The applicant will be required to obtain a Public Works Clearance prior to the issuance of a Building Permit. The clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
9. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP02-032, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.

11. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning
12. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
14. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
15. **Short term Construction Air Impacts.** Precautions should be taken during construction activities. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site. BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices should be implemented during all phases of construction on the project site. With the inclusion of these mitigation measures, the short-term air quality impacts associated with construction will be reduced to less-than significant levels.
 - a. Use dust-proof chutes for loading construction debris onto trucks.
 - b. Water to control dust generation during demolition of structures and break-up of pavement.
 - c. Cover all trucks hauling demolition debris from the site.
 - d. Ware or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
 - e. Cover all trucks hauling soil, sand, or loose materials, or required trucks to maintain at least two feet of freeboard.
 - f. Sweep daily all paved access road, parking areas, and staging areas at construction sites.
 - g. Sweep streets daily if visible soil material is carried onto adjacent public streets.
 - h. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc).

- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- j. Replant vegetation in disturbed areas as quickly as possible.

16. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
 2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: Building Division (2)
Engineering Services